



March 30, 1999

ENGROSSED

HOUSE BILL No. 1715

DIGEST OF HB1715 (Updated March 25, 1999 2:11 pm - DI 100)

Citations Affected: IC 24-4.5; IC 24-7; IC 28-1; IC 28-7; IC 28-8.

Synopsis: Consumer credit. Specifies that the maximum rate of interest may not be exceeded upon prepayment for the period a credit sale or loan was in effect for a simple interest transaction that includes prepaid credit service charges or finance charges. Requires a creditor to provide accurate payoff information to the debtor. Specifies that a person may not regularly engage in the business of making consumer loans unless the person is a supervised financial institution or is licensed by the department of financial institutions. Specifies that the three month window to operate without an approved license to make consumer loans applies only to lenders taking assignment of mortgages. Adds a small loan chapter to the Uniform Consumer Credit Code. Limits the accrual of additional pawnbroker fees. Makes certain other changes. Makes conforming amendments.

Effective: July 1, 1999.

Bodiker, Burton, Crawford, Porter

(SENATE SPONSORS — SERVER, LANANE)

January 26, 1999, read first time and referred to Committee on Financial Institutions.
February 18, 1999, amended, reported — Do Pass.
March 3, 1999, read second time, amended, ordered engrossed.
March 4, 1999, engrossed.
March 8, 1999, read third time, passed. Yeas 67, nays 27.

SENATE ACTION

March 11, 1999, read first time and referred to Committee on Insurance and Financial Institutions.
March 29, 1999, amended, reported favorably — Do Pass.

EH 1715—LS 7778/DI 94+



C
o
p
y

March 30, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

ENGROSSED HOUSE BILL No. 1715

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations; consumer sales and credit.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 24-4.5-1-102 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 102. Purposes; Rules
3 of Construction) (1) This article shall be liberally construed and
4 applied to promote its underlying purposes and policies.
5 (2) The underlying purposes and policies of this article are:
6 (a) to simplify, clarify, and modernize the law governing retail
7 installment sales, consumer credit, small loans, and usury;
8 (b) to provide rate ceilings to assure an adequate supply of credit
9 to consumers;
10 (c) to further consumer understanding of the terms of credit
11 transactions and to foster competition among suppliers of
12 consumer credit so that consumers may obtain credit at
13 reasonable cost;
14 (d) to protect consumer buyers, lessees, and borrowers against
15 unfair practices by some suppliers of consumer credit, having due
16 regard for the interests of legitimate and scrupulous creditors;

EH 1715—LS 7778/DI 94+



(e) to permit and encourage the development of fair and economically sound consumer credit practices;

(f) to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act; and

(g) to make uniform the law including administrative rules among the various jurisdictions.

(3) A reference to a requirement imposed by this article includes reference to a related rule of the department adopted pursuant to this article.

(4) A reference to a federal law in IC 24-4.5 is a reference to the law in effect December 31, ~~1997~~ **1998**.

SECTION 2. IC 24-4.5-1-303 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 303. Index of Definitions in Article-Definitions in this article and the sections in which they appear are:

"Agreement"	Section 1-301 (1)
"Agricultural purpose"	Section 1-301 (2)
"Amount financed"	Section 2-111
"Average daily balance"	Section 1-301 (3)
"Cash price"	Section 2-110
"Check"	Section 7-106
"Civil court"	Section 6-117
"Closing costs"	Section 1-301 (4)
"Conspicuous"	Section 1-301 (5)
"Consumer credit"	Section 1-301 (6)
"Consumer credit insurance"	Section 4-103
"Consumer credit sale"	Section 2-104
"Consumer lease"	Section 2-106
"Consumer loan"	Section 3-104
"Consumer related loan"	Section 3-602
"Consumer related sale"	Section 2-602
"Credit"	Section 1-301 (7)
"Creditor"	Section 1-301 (8)
"Credit insurance act"	Section 4-102 (3)
"Credit service charge"	Section 2-109
"Deferred deposit transaction"	Section 7-105
"Department"	Section 6-103
"Director"	Section 6-103.5
"Earnings"	Section 1-301 (9)
"Federal Consumer Credit Protection Act"	Section 1-302
"Goods"	Section 2-105 (1)



C
O
P
Y

1	"Home solicitation sale"	Section 2-501
2	"Lender"	Section 3-107 (1)
3	"Lender credit card or similar	
4	arrangement"	Section 1-301 (10)
5	"Loan"	Section 3-106
6	"Loan finance charge"	Section 3-109
7	"Loan primarily secured by an	
8	interest in land"	Section 3-105
9	"Merchandise certificate"	Section 2-105 (2)
10	"Mortgage transaction"	Section 1-301 (17)
11	"Official fees"	Section 1-301 (11)
12	"Organization"	Section 1-301 (12)
13	"Payable in installments"	Section 1-301 (13)
14	"Person"	Section 1-301 (14)
15	"Person related to"	Section 1-301 (15)
16	"Precomputed" (loan)	Section 3-107 (2)
17	"Precomputed" (sale)	Section 2-105 (7)
18	"Presumed" or "Presumption"	Section 1-301 (16)
19	"Principal"	Section 3-107 (3)
20	"Regularly engaged"	Section 1-301 (18)
21	"Renewal"	Section 7-107
22	"Revolving charge account"	Section 2-108
23	"Revolving loan account"	Section 3-108
24	"Sale of goods"	Section 2-105 (4)
25	"Sale of an interest in land"	Section 2-105 (6)
26	"Sale of services"	Section 2-105 (5)
27	"Seller"	Section 2-107
28	"Seller credit card"	Section 1-301 (19)
29	"Services"	Section 2-105 (3)
30	"Small loan"	Section 7-104
31	"Supervised financial	
32	organization"	Section 1-301 (20)
33	"Supervised lender"	Section 3-501 (2)
34	"Supervised loan"	Section 3-501 (1)
35	SECTION 3. IC 24-4.5-2-209 IS AMENDED TO READ AS	
36	FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 209. Right to Prepay -	
37	(1) Subject to the provisions on rebate upon prepayment	
38	(IC 24-4.5-2-210), the buyer may prepay in full the unpaid balance of	
39	a consumer credit sale, refinancing, or consolidation at any time	
40	without penalty.	
41	(2) At the time of prepayment of a credit sale not subject to the	
42	provisions of rebate upon prepayment (IC 24-4.5-2-210), the total	



credit service charge, including the prepaid credit service charge but excluding the charges allowed under IC 24-4.5-3-201(8), may not exceed the maximum charge allowed under this chapter for the period the credit sale was in effect.

(3) The creditor shall provide an accurate payoff of the consumer credit sale to the debtor within ten (10) calendar days after the creditor receives the debtor's written request for the accurate consumer credit sale payoff amount. A creditor who fails to provide the accurate consumer credit sale payoff amount is liable for:

(A) one hundred dollars (\$100) if an accurate consumer credit sale payoff amount is not provided by the creditor within ten (10) calendar days after the creditor receives the debtor's first written request; and

(B) the greater of:

(i) one hundred dollars (\$100); or

(ii) the credit service charge that accrues on the sale from the date the creditor receives the first written request until the date on which the accurate consumer credit sale payoff amount is provided;

if an accurate consumer credit sale payoff amount is not provided by the creditor within ten (10) calendar days after the creditor receives the debtor's second written request, and the creditor failed to comply with clause (A) of this subdivision.

SECTION 4. IC 24-4.5-3-102 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 102. This chapter applies to consumer loans, including regulated and supervised loans. In addition, IC 24-4.5-3-601 through IC 24-4.5-3-605 and IC 24-4.5-7 apply to consumer related loans.

SECTION 5. IC 24-4.5-3-209 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 209. Right to Prepay -

(1) Subject to the provisions on rebate upon prepayment (IC 24-4.5-3-210), the debtor may prepay in full the unpaid balance of a consumer loan, refinancing, or consolidation at any time without penalty. With respect to a consumer loan that is primarily secured by an interest in land, a lender may contract for a penalty for prepayment of the loan in full, not to exceed two percent (2%) of the net unpaid balance after deducting all refunds and rebates as of the date of the prepayment. However, the penalty may not be imposed:

(+) (a) if the loan is refinanced or consolidated with the same creditor;



C
o
p
y

(2) (b) for prepayment by proceeds of any insurance or acceleration after default; or

(3) (c) after three (3) years from the contract date.

(2) At the time of prepayment of a consumer loan not subject to the provisions of rebate upon prepayment (IC 24-4.5-3-210), the total finance charge, including the prepaid finance charge but excluding the charges allowed under IC 24-4.5-3-201(8), may not exceed the maximum charge allowed under this chapter for the period the loan was in effect.

(3) The creditor shall provide an accurate payoff of the consumer loan to the debtor within ten (10) calendar days after the creditor receives the debtor's written request for the accurate consumer loan payoff amount. A creditor who fails to provide the accurate consumer loan payoff amount is liable for:

(A) one hundred dollars (\$100) if an accurate consumer loan payoff amount is not provided by the creditor within ten (10) calendar days after the creditor receives the debtor's first written request; and

(B) the greater of:

(i) one hundred dollars (\$100); or

(ii) the loan finance charge that accrues on the loan from the date the creditor receives the first written request until the date on which the accurate consumer loan payoff amount is provided;

if an accurate consumer loan payoff amount is not provided by the creditor within ten (10) calendar days after the creditor receives the debtor's second written request, and the creditor failed to comply with clause (A) of this subdivision.

SECTION 6. IC 24-4.5-3-502 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 502. Authority to Make Consumer Loans - Unless a person is a supervised financial organization or has first obtained a license from the department, the person shall not **regularly** engage in this state in the business of:

(1) (a) making consumer loans; or

(2) (b) taking assignments of and undertaking direct collection of payments from or enforcement of rights against debtors arising from consumer loans. ~~but the person~~

However, an assignee may collect and enforce for three (3) months without a license if the ~~person~~ **assignee** promptly applies for a license and the ~~person's assignee's~~ application has not been denied.

SECTION 7. IC 24-4.5-3-503 IS AMENDED TO READ AS



FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 503. License to Make Consumer Loans) (1) The department shall receive and act on all applications for licenses to make consumer loans. Applications must be as prescribed by the director of the department of financial institutions.

(2) A license shall not be issued unless the department finds that the financial responsibility, character, and fitness of the applicant and of the members of the applicant (if the applicant is a co-partnership or an association) and of the officers and directors of the applicant (if the applicant is a corporation) are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article. The director is entitled to request evidence of compliance with this section **at the time of application or after a license is issued. The evidence requested includes, but is not limited to, an official report of criminal activity of the applicant from the state law enforcement agency of the state in which the applicant resides.**

(3) Upon written request, the applicant is entitled to a hearing on the question of the qualifications of the applicant for a license as provided in IC 4-21.5.

(4) The applicant shall pay the following fees at the time designated by the department:

(a) An initial license fee as established by the department under IC 28-11-3-5.

(b) An initial investigation fee as established by the department under IC 28-11-3-5.

(c) An annual renewal fee as established by the department under IC 28-11-3-5.

(d) A fee as established by the department under IC 28-11-3-5 may be charged for each day the annual renewal fee is delinquent.

(5) The applicant may deduct the fees required under subsection 4(a) through 4(c) from the filing fees paid under IC 24-4.5-6-203.

(6) A loan license issued under this section is not assignable or transferable.

SECTION 8. IC 24-4.5-5-203 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 203. Civil Liability for Violation of Disclosure Provisions) (1) Except as otherwise provided in this section, a creditor who, in violation of the provisions on disclosure (Part 3) of the Chapter on Credit Sales (Chapter 2), ~~and the Chapter on Loans (Chapter 3),~~ **and the Chapter on Small Loans (Chapter 7),** fails to disclose information to a person entitled to the information under this article is liable to that person in an amount equal to the sum of:



(a) the following:

(1) in the case of an individual action, twice the amount of the credit service or loan finance charge in connection with the transaction, but the liability pursuant to this subdivision shall be not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000); or

(2) in the case of a class action, an amount the court allows, except that as to each member of the class no minimum recovery is applicable, and the total recovery under this subdivision in any class action or series of class actions arising out of the same failure to comply by the same creditor may not be more than the lesser of:

(i) five hundred thousand dollars (\$500,000); or

(ii) one percent (1%) of the net worth of the creditor; and

(b) in the case of a successful action to enforce the liability under paragraph (a), the costs of the action together with reasonable attorney's fees as determined by the court. In determining the amount of the award in a class action, the court shall consider, among other relevant factors, the amount of any award granted under the federal Consumer Credit Protection Act (15 U.S.C. 1601 et seq.), the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

(2) A creditor has no liability under this section if within sixty (60) days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error, **provides corrected disclosures**, and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay a credit service charge or loan finance charge in excess of the amount or percentage rate actually disclosed.

(3) A creditor may not be held liable in any action brought under this section for a violation of this Article if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error. **A bona fide error includes reliance on the rules and interpretations of the Federal Reserve Board with regard to corresponding disclosures required by federal law.**

(4) If there are multiple obligors in a consumer credit transaction or consumer lease, there may not be more than one (1) recovery of damages under subdivision (a)(1) for one (1) violation of this article



with respect to that consumer credit transaction or consumer lease.

(5) The multiple failure to disclose to any person any information required under this article to be disclosed in connection with a single account under an open end consumer credit plan, a single consumer credit sale, a consumer loan, a consumer lease, or another extension of consumer credit entitles that person to a single recovery under this section. However, continued failure to disclose after a recovery has been granted gives rise to rights to additional recoveries.

(6) Any action which may be brought under this section against the original creditor in any credit transaction involving a security interest in land may be maintained against any subsequent assignee of the original creditor where the assignee, its subsidiaries, or affiliates were in a continuing business relationship with the original creditor either at the time the credit was extended or at the time of the assignment, unless the assignment was involuntary, or the assignee shows by a preponderance of evidence that it did not have reasonable grounds to believe that the original creditor was engaged in violations of this Article, and that it maintained procedures reasonably adapted to apprise it of the existence of the violations.

(7) No action pursuant to this section may be brought more than one (1) year after the date of the occurrence of the violations.

(8) In this section, creditor includes a person who in the ordinary course of business regularly extends or arranges for the extension of credit, or offers to arrange for the extension of credit.

SECTION 9. IC 24-4.5-5-204 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 204. Debtor's Right to Rescind Certain Transactions) (1) A violation by a creditor of Section 125 of the Federal Consumer Credit Protection Act (IC 24-4.5-1-302) concerning the debtor's right to rescind a transaction that is a consumer credit sale or a consumer loan constitutes a violation of IC 24-4.5. A creditor may not accrue interest during the period when a consumer loan may be rescinded under Section 125 of the Federal Consumer Protection Act (15 U.S.C. 1635).

(2) A creditor must make available for disbursement the proceeds of a transaction subject to subsection (1) on the first business day after the expiration of the rescission period under subsection (1).

SECTION 10. IC 24-4.5-7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:

Chapter 7. Small Loans

Sec. 101. Short Title — This chapter shall be known and may be



1 cited as Uniform Consumer Credit Code — Small Loans.

2 Sec. 102. Except as otherwise provided, all provisions of this
3 article applying to consumer loans apply to small loans, as defined
4 in this chapter.

5 Sec. 103. The following definitions apply to this chapter:

6 "Small loan" Section 7-104

7 "Deferred deposit transaction" Section 7-105

8 "Check" Section 7-106

9 "Renewal" Section 7-107

10 Sec. 104. "Small loan" means a deferred deposit transaction
11 with a principal loan amount of five hundred dollars (\$500) or less
12 with a term of less than thirty (30) days.

13 Sec. 105. "Deferred deposit transaction" means, for
14 consideration, accepting a check and holding the check for a period
15 of time before deposit or presentment in accordance with an
16 agreement between the maker and the lender. The agreement may
17 be express or implied.

18 Sec. 106. For purposes of this chapter, "check" has the meaning
19 set forth in IC 26-1-3.1-104.

20 Sec. 107. "Renewal" refers to a deferred deposit transaction
21 that takes the place of an existing deferred deposit transaction,
22 where a check held as security is not deposited into an account of
23 the lender at a depository institution.

24 Sec. 201. Loan finance charges on a small loan and subsequent
25 renewals are limited to fifteen percent (15%) of the face amount of
26 the loan per transaction.

27 Sec. 202. (1) Notwithstanding any other law, only the following
28 fees may be contracted for and received by the lender on a small
29 loan or subsequent refinancing:

30 (a) The parties may contract for a delinquency charge of not
31 more than five dollars (\$5) on any installment not paid in full
32 within ten (10) days after its scheduled due date.

33 (b) A delinquency charge under this section may be collected
34 only once on an installment, however long it remains in
35 default. A delinquency charge may be collected any time after
36 it accrues.

37 (c) The amount of five dollars (\$5) in subdivision (a) is subject
38 to change pursuant to the section on adjustment of dollar
39 amounts (IC 24-4.5-1-106).

40 (d) If the parties provide by contract for a delinquency charge
41 that is subject to change, the lender shall disclose that the
42 amount of the delinquency charge is subject to change as



1 allowed by IC 24-4.5-1-106.

2 (2) The agreement may provide for the payment by the debtor
3 of reasonable attorney's fees after default and referral to an
4 attorney who is not a salaried employee of the lender. A provision
5 in violation of this section is unenforceable.

6 (3) An additional charge may be made not to exceed twenty
7 dollars (\$20) for each return by a bank or other depository
8 institution of a dishonored check, negotiable order of withdrawal,
9 or share draft issued by the debtor.

10 Sec. 203. Transactions made in compliance with this chapter are
11 exempt from the provisions of IC 35-45-7-1.

12 Sec. 301. (1) For purposes of this section, the lender shall
13 disclose to the debtor to whom credit is extended with respect to a
14 small loan or subsequent refinancing the information required by
15 the Federal Consumer Credit Protection Act.

16 (2) In addition to the requirements of subsection (1), the lender
17 must conspicuously display in bold type a notice to the public both
18 in the lending area of each business location and in the loan
19 documents the following statement:

20 "WARNING: The cost of your transaction may be higher
21 than similar transactions offered by other lending institutions.
22 The transactions are regulated by the State of Indiana,
23 Department of Financial Institutions. The transaction may be
24 refinanced only three times, after which payment in full is
25 required."

26 Sec. 401. A small loan may be secured by only one (1) check per
27 deferred deposit transaction. The check may not exceed the
28 amount advanced to or on behalf of the consumer, plus loan
29 finance charges contracted for.

30 Sec. 402. A small loan may not be secured by personal property
31 other than a check.

32 Sec. 403. Use of Multiple Agreements — With respect to a small
33 loan or subsequent refinancing, no lender may permit a person to
34 become obligated under more than one (1) loan agreement. The
35 excess amount of loan finance charge provided for in agreements
36 in violation of this section is an excess charge for purposes of the
37 provisions on effect of violations on rights of parties
38 (IC 24-4.5-5-202) and the provisions on civil actions by the
39 department (IC 24-4.5-6-113).

40 Sec. 404. Conduct of Business Other Than Making Loans — A
41 licensee may carry on other business at a location where the
42 licensee makes small loans unless the licensee carries on other



business to evade or violate this article.

Sec. 405. No Assignment of Earnings — (1) A lender may not take an assignment of earnings of the debtor for payment or as security for payment of a debt arising out of a small loan or otherwise. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the debtor. This section does not prohibit an employee from authorizing deductions from the employee's earnings if the authorization is revocable and is permitted by law.

(2) A sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings is considered to be a loan to the seller secured by an assignment of earnings.

Sec. 406. Limitation on Default Charges — An agreement with respect to a small loan may not provide for charges as a result of default by the debtor other than those authorized by this chapter. A provision in violation of this section is unenforceable.

Sec. 407. No lender may permit a debtor to refinance the same small loan more than three (3) times.

Sec. 408. (1) A renewal or a refinancing of a small loan requires:

- (a) a new contractual agreement;
- (b) a new check as security; and
- (c) new disclosures under IC 24-4.5-7-301.

(2) If a customer pays off the small loan in cash or its equivalent, the check that was held as security must be returned to the customer.

Sec. 409. Except when a customer has written a check on an account that is closed prior to the agreed upon negotiation date for the check, a civil or criminal penalty does not apply to small loan transactions under IC 26-2-7, IC 34-24-3, IC 34-4-30 (before its repeal), or IC 35-43-5. A contractual agreement in a small loan transaction must include the above language.

SECTION 11. IC 24-7-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. ~~This article does not apply to~~ Rental purchase agreements **under this article** involving motor vehicles (as defined in IC 9-13-2-105(a)) **are prohibited.**

SECTION 12. IC 28-1-29-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) No person shall operate a budget service company in the state of Indiana without having obtained a license from the department. **The director is entitled to request evidence of compliance with this section at the time of application or after a license is issued. The evidence**



1 requested includes, but is not limited to, an official report of
 2 criminal activity of the applicant from the state law enforcement
 3 agency of the state in which the applicant resides. The fee for a
 4 license or renewal shall be fixed by the department under IC 28-11-3-5
 5 and shall be nonrefundable. A licensee failing to renew annually shall
 6 be required to pay a fee fixed by the department under IC 28-11-3-5 for
 7 a new application.

8 (b) If a person knowingly acts as a budget service company in
 9 violation of this chapter, any agreement the person has made under this
 10 chapter is void and the debtor under the agreement is not obligated to
 11 pay any fees. If the debtor has paid any amounts to the person, the
 12 debtor, or the department on behalf of the debtor, may recover the
 13 payment from the person that violated this section.

14 (c) **A license issued under this section is not assignable or**
 15 **transferable.**

16 SECTION 13. IC 28-1-29-8 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. A licensee:

18 (1) Shall deliver to every contract debtor, at the time the contract
 19 is made, a copy of the contract, showing:

20 (A) the date executed;

21 (B) the ~~maximum~~ rate of charge **the licensee will impose;**

22 (C) ~~the~~ initial set up fee;

23 (D) the cancellation fee; ~~and~~

24 (E) **the total fee to be assessed by the licensee, including the**
 25 **initial set up fee but excluding the cancellation fee;**

26 (F) ~~the~~ amount of debts claimed by the contract debtor to be
 27 due ~~his~~ **the contract debtor's** creditors; ~~and~~

28 (G) **the total debt to be repaid under the contract;**

29 and shall immediately notify all creditors of the licensee's and
 30 **contract** debtor's relationship. The contract shall specify the
 31 schedule of payments from the **contract** debtor under the debt
 32 program **and the total amount to be paid under the payment**
 33 **schedule.**

34 (2) May take no fee unless a debt program, or finance program, or
 35 both agreed upon by the licensee and the contract debtor has been
 36 arranged. All creditors must be notified of the **contract** debtor's
 37 and licensee's relationship. Acceptance of a program payment
 38 constitutes agreement by the creditor.

39 (3) Shall give to the contract debtor a dated receipt for each
 40 payment, at the time of the payment, unless the payment is made
 41 by check, money order, or direct deposit.

42 (4) Shall, upon cancellation by ~~the~~ **the** contract debtor of the contract,



1 notify immediately in writing all creditors of **the** contract debtor.

2 (5) Shall maintain in ~~his~~ **the licensee's** business such books,
3 accounts, and records as will enable the department or the state's
4 attorney general to determine whether such license is complying
5 with this chapter. Such books, accounts, and records shall be
6 preserved for at least three (3) years after making the final entry
7 of any contract recorded therein.

8 (6) May not, except as provided in subdivision (7), receive a fee
9 from the contract debtor for services in excess of fifteen percent
10 (15%) of the amount the debtor agrees to pay through the
11 licensee, divided into equal monthly payments over the term of
12 the contract. The total monthly amount of fees paid by the
13 contract debtor to the licensee plus the fair share fees paid by the
14 contract debtor's creditors to the licensee shall not exceed twenty
15 percent (20%) of the monthly amount the debtor agrees to pay
16 through the licensee. The accrual method of accounting shall
17 apply to the creditor's fair share fees received by the licensee. The
18 program fee may be charged for any one (1) month or part of a
19 month. As a portion of the total fees and charges stated in the
20 contract, the licensee may require the debtor to pay a maximum
21 initial payment of fifty dollars (\$50). The initial payment must be
22 deducted from the total contract fees and charges to determine the
23 monthly amortizable amount for subsequent fees. Unless
24 approved by the department, the licensee may not retain in the
25 debtor's trust account, for charges, an amount more than one (1)
26 month's fee plus the close-out fee. Any fee charged by the
27 licensee to the debtor under this section for services rendered by
28 the licensee, other than the amount pursuant to subdivision (7), is
29 not considered a debt owed by the debtor to the licensee.

30 (7) Upon cancellation by a contract debtor or termination of
31 payments by a contract debtor, may not withhold for ~~his~~ **the**
32 **licensee's** own benefit, in addition to the amounts specified in
33 subdivision (6), more than one hundred dollars (\$100), which may
34 be accrued as a close-out fee. The licensee may not charge the
35 contract debtor more than one (1) set up fee, or cancellation fee,
36 or both unless the contract debtor leaves the services of the
37 licensee for more than six (6) months.

38 (8) May not accept an account unless a thorough, written budget
39 analysis of the debtor indicates that the debtor can reasonably
40 meet the payments required in the budget analysis.

41 (9) May not enter into a contract with a contract debtor for a
42 period longer than twenty-four (24) months.



1 SECTION 14. IC 28-7-5-4 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. Application for a
 3 pawnbroker's license shall be submitted on a form prescribed by the
 4 department and must include all information required by the
 5 department. **The director is entitled to request evidence of**
 6 **compliance with this section at the time of application or after a**
 7 **license is issued. The evidence requested includes, but is not limited**
 8 **to, an official report of criminal activity of the applicant from the**
 9 **state law enforcement agency of the state in which the applicant**
 10 **resides.**

11 SECTION 15. IC 28-7-5-28.5 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 28.5. In addition to the
 13 loan finance charge authorized by section 28 of this chapter, a
 14 pawnbroker may charge, contract for, and receive a fee not to exceed
 15 one-fifth (1/5) of the principal amount of the loan per month or any
 16 fractional part of a month for servicing the pledge that may include
 17 investigating the title, storing, providing security, appraisal, handling,
 18 making daily reports to local law enforcement officers, and for other
 19 expenses and costs associated with servicing the pledge. **The fee for**
 20 **each month after the second month of the loan transaction is**
 21 **limited to one-thirtieth (1/30) of the monthly fee for each day the**
 22 **loan is outstanding.** Such a charge when made and collected is not
 23 interest and is not a rate under IC 35-45-7-1.

24 SECTION 16. IC 28-8-4-20 IS AMENDED TO READ AS
 25 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 20. A person may not
 26 engage in the business of money transmission without a license
 27 required by this chapter. **Application for a license shall be submitted**
 28 **on a form prescribed by the department and must include all**
 29 **information required by the department. The director is entitled**
 30 **to request evidence of compliance with this section at the time of**
 31 **application or after a license is issued. The evidence requested**
 32 **includes, but is not limited to, an official report of criminal activity**
 33 **of the applicant from the state law enforcement agency of the state**
 34 **in which the applicant resides.**

35 SECTION 17. IC 28-8-5-12 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 12. (a) The department
 37 shall determine the financial responsibility, business experience,
 38 character, and general fitness of the applicant before issuing the
 39 license.

40 (b) The department may refuse to issue a license if an applicant who
 41 is an individual has been convicted of a felony.

42 (c) The director of the department may request evidence of



1 compliance with this section by the licensee **at the time of application**
2 **or after a license is issued. The evidence requested includes, but is**
3 **not limited to, an official report of criminal activity of the applicant**
4 **from the state law enforcement agency of the state in which the**
5 **applicant resides.**

C
o
p
y



COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1715, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, delete line 33.

Page 2, delete line 41.

Page 4, line 5, delete "rate" and insert "**charge**".

Page 4, line 8, delete "if requested by" and insert "**to**".

Page 4, line 8, delete "in writing or in" and insert "**within ten (10) calendar days after the creditor receives the debtor's written request for the accurate consumer credit sale payoff amount. A creditor who fails to provide the accurate consumer credit sale payoff amount is liable for:**

(A) one hundred dollars (\$100) if an accurate consumer credit sale payoff amount is not provided by the creditor within ten (10) calendar days after the creditor receives the debtor's first written request; and

(B) the greater of:

(i) one hundred dollars (\$100); or

(ii) the credit service charge that accrues on the sale from the date the creditor receives the first written request until the date on which the accurate consumer credit sale payoff amount is provided;

if an accurate consumer credit sale payoff amount is not provided by the creditor within ten (10) calendar days after the creditor receives the debtor's second written request, and the creditor failed to comply with clause (A) of this subdivision."

Page 4, delete lines 9 through 11.

Page 4, line 13, delete "FOLLOWS:" and insert "FOLLOWS [EFFECTIVE JULY 1, 1999]:".

Page 4, line 35, delete "rate" and insert "**charge**".

Page 4, line 38, delete "if requested by" and insert "**to**".

Page 4, line 38, delete "in writing or in person." and insert "**within ten (10) calendar days after the creditor receives the debtor's written request for the accurate consumer loan payoff amount. A creditor who fails to provide the accurate consumer loan payoff amount is liable for:**

(A) one hundred dollars (\$100) if an accurate consumer loan payoff amount is not provided by the creditor within ten (10) calendar days after the creditor receives the

C
O
P
Y



debtor's first written request; and

(B) the greater of:

(i) one hundred dollars (\$100); or

(ii) the loan finance charge that accrues on the loan from the date the creditor receives the first written request until the date on which the accurate consumer loan payoff amount is provided;

if an accurate consumer loan payoff amount is not provided by the creditor within ten (10) calendar days after the creditor receives the debtor's second written request, and the creditor failed to comply with clause (A) of this subdivision."

Page 4, delete lines 39 through 41.

Page 6, delete lines 4 through 15.

Page 8, line 13, delete "disburse" and insert "**make available for disbursement**".

Page 8, line 13, delete "consummated" and insert "**transaction subject to subsection (1)**".

Page 8, line 14, delete "transaction".

Page 8, line 15, delete "." and insert "**under subsection (1)**".

Page 13, line 38, delete "A loan in" and insert "**The fee for each month after the second month of the loan transaction is limited to one-thirtieth (1/30) of the monthly fee for each day the loan is outstanding.**".

Page 13, delete lines 39 through 41.

Page 13, line 42, delete "period past original maturity".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1715 as introduced.)

BODIKER, Chair

Committee Vote: yeas 9, nays 5.



HOUSE MOTION

Mr. Speaker: I move that House Bill 1715 be amended to read as follows:

Page 4, line 29, before "and" delete ",".

Page 9, line 20, after "201." insert "(a)".

Page 9, line 20, delete "a" and insert "**an initial**".

Page 9, line 20, delete "subsequent" and insert "**the first renewal of a small loan**".

Page 9, line 21, delete "renewals".

Page 9, line 21, delete "twenty dollars (\$20) per transaction." and insert "**the lesser of:**

(1) fifteen percent (15%) of the face amount of the loan; or

(2) thirty dollars (\$30)."

Page 9, between lines 21 and 22, begin a new paragraph and insert:

"(b) Loan finance charges on a second renewal of a small loan are limited to seventy-five percent (75%) of the loan finance charge of the initial small loan."

Page 11, line 14, delete "one (1) time" and insert "**two (2) times**".

(Reference is to HB 1715 as printed February 19, 1999.)

BODIKER

C
O
P
Y



COMMITTEE REPORT

Mr. President: The Senate Committee on Insurance and Financial Institutions, to which was referred House Bill No. 1715, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 15, after "Article" insert "-".

Page 4, line 2, after "prepaid credit service charge" insert "**but excluding the charges allowed under IC 24-4.5-3-201(8)**".

Page 5, line 6, after "prepaid finance charge" insert "**but excluding the charges allowed under IC 24-4.5-3-201(8)**".

Page 5, line 31, after "Loans" insert "-".

Page 7, line 26, after "error" insert ", **provides corrected disclosures,**".

Page 7, line 35, after "." insert "**A bona fide error includes reliance on the rules and interpretations of the Federal Reserve Board with regard to corresponding disclosures required by federal law.**".

Page 9, line 13, delete "expressed" and insert "**express**".

Page 9, line 20, delete "(a)".

Page 9, line 20, delete "an initial" and insert "**a**".

Page 9, line 21, delete "the first renewal of a small loan" and insert "**subsequent renewals**".

Page 9, line 21, delete "the lesser of:".

Page 9, line 22, delete "(1)".

Page 9, run in lines 21 through 22.

Page 9, line 22, delete "; or" and insert "**per transaction.**".

Page 9, delete lines 23 through 26.

Page 10, between lines 9 and 10, begin a new paragraph and insert: "**Sec. 203. Transactions made in compliance with this chapter are exempt from the provisions of IC 35-45-7-1.**".

Page 10, line 22, delete "one time" and insert "**three times**".

Page 10, delete lines 24 through 25.

Page 10, line 26, delete "402." and insert "**401.**".

Page 10, line 30, delete "403." and insert "**402.**".

Page 10, line 32, delete "404." and insert "**403.**".

Page 10, line 40, delete "405." and insert "**404.**".

Page 11, line 2, delete "406." and insert "**405.**".

Page 11, line 14, delete "407." and insert "**406.**".

Page 11, line 18, delete "408." and insert "**407.**".

Page 11, line 19, delete "two (2)" and insert "**three (3)**".

Page 11, line 20, delete "409." and insert "**408.**".

C
O
P
Y

Page 11, line 27, delete "410." and insert "**409.**".
and when so amended that said bill do pass.

(Reference is to HB 1715 as reprinted March 4, 1999.)

PAUL, Chairperson

Committee Vote: Yeas 7, Nays 2.

C
o
p
y

